REPORT

OF THE

BOARD OF CENSORS

TO THE

MAINE MEDICAL ASSOCIATION

AT ITS

THIRTY-FIFTH ANNUAL MEETING

HELD AT

PORTLAND, JUNE 14, 1887:—

CONTAINING THE

COMMITTEE'S REPORT

ON THE

STATUS OF THE REGISTRATION ACT.

PORTLAND:
SOUTHWORTH BROS., PRINTERS.
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REPORT OF THE BOARD OF CENSORS

IN REFERENCE TO

THE REGISTRATION ACT:—

ENACTED BY THE LEGISLATURE OF MAINE,

MARCH 17, 1887,

AND APPROVED BY GOV. BODWELL ON THE SAME DAY.

[BUT AFTERWARDS RECALLED BY HIM FROM THE OFFICE OF THE SECRETARY OF STATE, AND VETOED (?).]

To the Maine Medical Association :—

The undersigned, Censors of the Association, beg leave to report

That on the twenty-third day of March last the following communication was received from the President of the Association :—

[LETTER OF PRESIDENT WALKER TO THE CENSORS.]

THOMASTON, ME., March 22, 1887.

To the Board of Censors of the Maine Medical Association :—

GENTLEMEN :—

I am informed of a state of facts from which I am led to believe that the Registration Bill for which we have

contended so long in the interest of the public, became a law during the recent session of the Legislature.

It appears that it passed through all the stages of Legislation, that it received the approval of the Governor, and was deposited with the Secretary of State.

I am advised by eminent legal counsel, that the Bill thus became a law, which the Governor had no legal right to withdraw his signature from, and that if he subsequently obtained possession of it, and erased or in any way obliterated his signature, it would not change the legal character of the Act, but would be a mutilation of a public record as much as such an erasure from any other law passed during the last session would be, if he should now commit such an act.

I am advised that his subsequent sending of the Bill to the Senate, accompanied by a veto message, and the action of the Houses thereon, had no effect upon the law.

An act of the Legislature cannot be thus repealed or destroyed.

I take the liberty of asking your Board, as the proper organ of our Association, to investigate the facts, and if found as represented, to take such legal steps as you are advised would be competent, to enforce the law.

Respectfully yours;

J. B. WALKER,

Pres. Maine Medical Association.

In compliance with the foregoing suggestions of your President, a meeting of this Board was held at Portland, March 31, at which several eminent physicians of that city and other places were present.

After statements by Senator Sleeper, of Androscoggin county, and suggestions from other physicians in attendance, it was unanimously voted;—

That a committee be appointed, with authority to take such steps as to them may seem proper to ascertain the status of the Registration Act.

Accordingly the following committee was appointed on the same day, viz:—

Milton C. Wedgwood, M. D., of Lewiston,
Henry P. Merrill, M. D., of Portland,
Joseph L. Bennett, M. D., of Hiram,
Frederick C. Thayer, M. D., of Waterville,
Hon. Charles W. Goddard, of Portland, Professor of Medical Jurisprudence at Bowdoin College.

The committee at once entered upon the performance of the duty assigned them, and the result of their labors is contained in the accompanying report, which is approved and indorsed by the undersigned.

M. C. Wedgwood,
Henry P. Merrill,
J. L. Bennett,
F. N. Wheeler.

Portland, June 6, 1887.

Report of the Committee

UPON THE STATUS OF THE

REGISTRATION ACT

TO

THE BOARD OF CENSORS.

To the Board of Censors of the Maine Medical Association:—

Gentlemen:—

The undersigned, a committee appointed at a meeting of your Honorable Board held at Portland, March 31, 1887, for the purpose of ascertaining the status of the act entitled "An Act to regulate the Practice of Medicine," enacted by the Legislature of Maine, March 17, 1887, have the honor to report

That on the second day of April your committee, in pursuance of the duty assigned them, addressed to his Excellency the Governor, a communication, of which the following is a copy:—

[The Committee's First Letter to Governor Bodwell.]

To His Excellency, the Honorable Joseph R. Bodwell, the Governor of the State of Maine:—

Sir:—The undersigned, a committee appointed at a meeting of the Censors of the Maine Medical Association held at Portland on the thirty-first day of March, A. D. 1887, have the honor to make known to your Excellency that current conflict-

ing statements touching the bill or act entitled "An Act to regulate the Practice of Medicine," enacted by the Legislature March 17, 1887, are occasioning serious embarrassment to the medical profession throughout the State.

That declarations appear to have been made in the Legislature on the eve of the final adjournment tending to show that said bill or act had become a law of the State.

That the question involved is one of deep interest and serious consequence to the medical profession of Maine, and its members are vitally concerned in reference thereto, because they are anxious to know their rights as well as their duties in the premises.

And inasmuch as the facts on which the legal status of said bill or act depends would seem to be within the personal knowledge of your Excellency, the undersigned feel it their duty respectfully to request your Excellency to communicate to them all facts relative to the approval of said enactment, (if not in Your Excellency's judgment incompatible with the public interest,) in order that physicians and surgeons of the State and other citizens interested may be enabled to ascertain whether said bill or act is, or is not a public law of Maine and binding upon every citizen, and may lawfully and properly govern their conduct accordingly.

The undersigned have the honor to be, with high respect,

Your Excellency's obedient servants,

M. C. Wedgwood,
H. P. Merrill,
J. L. Bennett,
F. C. Thayer,
C. W. Goddard.

Portland, April 2, 1887.

That on the morning of Monday, April 4, a sub-committee, consisting of F. C. Thayer, of Waterville and C. W. Goddard, of Portland, proceeded to Augusta and then and there had the honor of an audience with the Governor, and presented said letter.

After a careful perusal of the same, the Governor replied verbally that he would with pleasure communicate in writing a full answer at an early day, assuring them of his wil-

lingness to put the committee in possession of all the facts so far as they were within his knowledge, having nothing to conceal or withhold. A conversation, (consisting mainly of voluntary statements by His Excellency of the arguments by which he was induced to recall the Act after his approval thereof and to reverse his action) ensued, at the close of which the Governor repeated his promise to send a full answer in writing at an early day. The sub-committee then took their leave, and with His Excellency's consent visited the office of the Secretary of State for the purpose of looking at some of the books which are kept there.

The Secretary of State, the Honorable Oromandal Smith, exhibited two books:—one known as "The Blotter," was found in the basement, in the possession of James R. Milliken, Esquire, second clerk; the other, known as "The Register," was in the main office, apparently in the immediate possession of the Secretary.

A description of the present condition of said volumes, and an account of the mutilations and erasures which they have suffered will be found in "Enclosure B" accompanying your committee's second letter to the Governor, (page 11.)

And the undersigned further report that on Wednesday, April 6, a letter was received from His Excellency, of which the following is a copy:—

[Governor Bodwell's First Letter to the Committee.]

STATE OF MAINE.

Executive Department, Augusta, April 5th, 1887.

To the Honorable, Committee of the Censors of the Maine Medical Association:—

Gentlemen.—

I have the honor to acknowledge the receipt of your communication of April 2d, touching the act of the last Legislature entitled "An Act to regulate the Practice of Medicine."

After mature consideration of the act in question I was unable to give it my approval, and consequently in the performance of my constitutional duty, I returned it with my objections to the house in which it originated. In personal conference yesterday with the gentlemen of your committee who presented your communication, I stated to them frankly and in detail, all the facts within my knowledge, which seemed to either of us to bear upon my Veto of the act which you refer to. I think of nothing to add to the facts thus stated.

I have the honor to be,

Very respectfully,

JOSEPH R. BODWELL Governor.

After His Excellency's promise to communicate a full reply in writing, it is to be regretted that he should have been induced on the very next day to resort to the less satisfactory course of referring your committee to verbal statements made by him to the sub-committee who waited on him. Although His Excellency's letter would justify and indeed seems to call for a detailed statement of the entire conversation between him and the sub-committee during the personal conference to which he is pleased to make reference, such a relation would expand this report to an inconvenient length. For that reason (and others which will be appreciated by the Governor,) your committee are disposed at present to confine themselves to a reference to such portion thereof as is embodied in "Enclosure A" accompanying their second letter to His Excellency (page 10.)

And your committee further report that on the eighteenth day of April they forwarded to the Governor a communication, of which the following is a copy:—

[SECOND LETTER TO GOVERNOR BODWELL.]

To His Excellency, the Honorable Joseph R. Bodwell, the Governor of the State of Maine:—

SIR:—The undersigned have the honor to acknowledge the receipt of your Excellency's communication of April 5, in re-

ply to that of the undersigned dated April 2, and presented personally, April 4.

The undersigned avail themselves of this opportunity to express their thanks for the promptness of your Excellency's answer, and to enclose a copy of the same with a memorandum of such of the statements which your Excellency was pleased to make to a sub-committee of their number as are referred to in your Excellency's communication and are necessary for a full understanding thereof.

The undersigned respectfully represent to your Excellency that the enclosed papers, together with the accompanying statement of said sub-committee of the condition which certain important books kept in the office of the Secretary of State will be found to disclose, present an important question of law in which the undersigned and the entire medical profession of the State, as well as large numbers of other citizens are deeply interested, viz:—whether the act, entitled "An Act to regulate the Practice of Medicine," enacted at the recent session of the Legislature, is or is not a public law of the State.

The undersigned further beg leave to represent that they are not advised of any process of law or equity within their power whereby they can obtain a determination of said question.

Wherefore they most respectfully request your Excellency in the exercise of that high prerogative conferred upon the Governor by the Constitution, to require the Justices of the Honorable Supreme Judicial Court to give their opinion whether upon the facts contained in the enclosed papers and in such other documents as your Excellency may be pleased to submit to the Honorable Justices, said Act is or is not a public law of the State and binding upon every citizen.

And the undersigned have the honor to be, with high respect,

Your Excellency's Obedient Servants,

M. C. Wedgwood,
H. P. Merrill,
J. L. Bennett,
F. C. Thayer,
C. W. Goddard.

Portland, April 12, 1887.

[Enclosure A, accompanying Second Letter to Governor Bodwell.]

Statements made by His Excellency the Governor, to F. C. Thayer and C. W. Goddard.

The following statements were made to a sub-committee of the Committee appointed at a meeting of the Censors of the Maine Medical Association held at Portland, March 31, 1887, for the purpose of ascertaining the legal status of a bill or act enacted at the recent session of the Legislature, entitled "An Act to regulate the Practice of Medicine," in a personal conference between His Excellency the Governor and said sub-committee at the Executive Chamber at Augusta, April 4, 1887, at the time of their presentation to His Excellency of a communication from said Committee, dated April 2, 1887, being the same statements referred to by His Excellency in his communication to said Committee, dated April 5, 1887.

In said conference, His Excellency, the Governor, was pleased to state as facts within his knowledge, touching said Act,

"That the Act entitled "An Act to regulate the Practice of Medicine," after its passage to be enacted by both branches of the Legislature was brought to the Executive Chamber in the forenoon of Thursday, March 17, the last day of the session, for his approval.

That after considerable deliberation, he concluded to approve the bill, and accordingly signed the same and sent it down to the office of the Secretary of State, with several other acts, which he had also approved, and went to dinner.

That on his return from dinner several gentlemen called to express their disapproval of and opposition to the act, and urged him to recall and veto it. That at first he objected, supposing that it was not within his constitutional power so to do, but that he was finally convinced to the contrary.

That he then, about 3 in the afternoon, sent to the office of the Secretary of State, recalled the act, and cancelled his signature by drawing two lines through it, as will appear by inspection of the document now on the Senate files. That afterwards on the same day he sent his veto message to the Senate.

And that he had no knowledge at the time of any erasures or mutilations of any books in the office of the Secretary of State. That he had no intention of exceeding his constitution-

al prerogative, and had neither concealed or attempted to conceal anything in reference thereto.

[Enclosure B. accompanying Second Letter to Governor Bodwell.]

Statement of the present condition of certain books in the office of the Secretary of State at Augusta.

At the office of the Secretary of State in the State House at Augusta are kept two books:—the one known as "The Blotter," and the other known as "The Register."

The Blotter has no title, but is an enumeration of bills which have been passed to be engrossed by both branches. Each page has four columns:—first, the number of the bill in figures:—second, its title:—third, the date of its passage to be engrossed:—and fourth, the date of its approval by the Governor.

Toward the latter part of the book, immediately after the line devoted to bill No. 424, appears the following line:—in the first column an erasure, apparently made by a sharp knife leaving the figures "425" dimly discernible:—in the second column, the words "An Act to regulate the Practice of Medicine:"—in the third column, the words and figures "March 16:"—in the fourth column, another similar erasure, leaving the words and figures "March 17" faintly visible. The number of the next bill on the following line is 425. No other erasure appears in the Blotter.*

On the cover of the Register is a morocco-gilt title, "Titles or Acts"; the book is a Register of Acts approved by the Governor. Its pages contain only three columns:—first, the number of the Act in figures:—second, its title; third, the date of its approval.*

Near the end of the Register, at the bottom of the left hand page, is the entry of Act No. 421, with its title and the date of its approval; this act, numbered in the Register 421, is the same act which is entered in the Blotter as bill 424.

On the top of the succeeding right-hand page appears the entry of Act No. 422, with its title and the date of its approval: that act, numbered in the Register 422, is the same act which is entered without erasure in the Blotter as bill 425.

Between the two entries 421 and 422 in the Register there is

* See page 22.

no erasure, neither is there any entry of the "Act to regulate the Practice of Medicine"; but there is evidence of the tearing out of a leaf, the mutilation of the Register revealing a narrow ragged margin close to the binding.

It is apparent from inspection that the partially erased line in the Blotter originally read thus: "*125.—An Act to regulate the Practice of Medicine,—March 16,—March 17.*"*

And it would seem that upon one side of the leaf which has been torn from the Register or "TITLES OF ACTS," there must originally have been recorded at the top of the page the following entry, "*122.—An act to regulate the Practice of Medicine —March 17.*"†

And that the entries were made in said books at the times which their respective dates import, at the Department of State, for the purpose of recording the fact that said bill was passed to be engrossed March 16, 1887, and that said act was approved by the Governor March 17, 1887.

And your committee further report that on the twenty-fifth day of April a second letter was received from the Governor, of which the following is a copy:—

[GOVERNOR BODWELL'S SECOND LETTER.]

STATE OF MAINE.

Executive Department. Augusta, April 20th., 1887.

To the Honorable, Committee of the Censors of the Maine Medical Association.

GENTLEMEN:—

I have to acknowledge the receipt of your communication of April 13th., relative to an act entitled "An Act to regulate the Practice of Medicine;" also the receipt of certain statements and papers accompanying such communication.

I could not assent in some important particulars to all the statements of fact and conclusions as understood and reported by your committee, but it is not material to dwell upon this, as, in the view which I take, the matters suggested in your commu-

* For a representation of the mutilated entry in the "Blotter," see page 22.

† See page 22.

nication do not give rise to such an "important question of law" and such a "solemn occasion," as would alone under the language of the Constitution, warrant me in requiring the opinion of the Justices of the Supreme Court.

I have the honor to be

Very respectfully.

JOSEPH R. BODWELL

And your committee further report that on the second day of May they forwarded to the Governor a communication, of which the following is a copy:—

[THIRD LETTER TO GOVERNOR BODWELL.]

To His Excellency, the Honorable Joseph R. Bodwell, the Governor of the State of Maine:

SIR:—The undersigned have the honor to acknowledge the receipt, (April 25) of Your Excellency's communication of April 20, in reply to the request of the undersigned dated April 12, and forwarded to Your Excellency April 18.

The situation disclosed by Your Excellency's statements of Your Excellency's proceedings in reference to the act entitled "An Act to regulate the Practice of Medicine," and by inspection of the mutilations apparent in the books kept in the Department of State for the registration of bills and acts is believed to be without precedent in the history of the State.

Therefore the undersigned regret that the question necessarily created by such a condition of affairs, to wit:—whether said act is, or is not a public law of the State, is not, in Your Excellency's view, of sufficient importance to Warrant Your Excellency in requiring the opinion of the Justices of the Supreme Judicial Court thereon, in accordance with the suggestion of the undersigned.

The undersigned are confident that the medical profession in common with all good citizens throughout the State, without regard to their own views or wishes, would cheerfully have accepted the opinion of the court thus obtained in one of the modes provided in the constitution, as an authoritative determination of the law not only for the government of their own conduct but also as the conclusive guide to the Governor and council in the performance of their duties.

In the absence of such authoritative determination, the undersigned are convinced by the statements made by Your Excellency and the evidence afforded by the books aforesaid, that said act is a public law of Maine, and being deeply interested in its faithful execution, feel it their duty respectfully to request Your Excellency to appoint five suitable persons as members of the State Board of Medical Examination and Registration, according to the requirements of the third section of said act. And the undersigned have the honor to be, with high respect,

Your Excellency's obedient servants,

M. C. Wedgwood,
H. P. Merrill,
F. C. Thayer,
C. W. Goddard.

Portland, April 30, 1887.

And on the seventeenth day of May the following letter was forwarded to the Governor:—

[Dr. Bennett's Letter to Gov. Bodwell.]

To His Excellency, the Honorable Joseph R. Bodwell, Governor of the State of Maine:—

Sir:—The undersigned, having been absent from the State for several weeks, avails himself of the earliest opportunity after his return to join in the request made by his associates to Your Excellency April 30.

He has the honor earnestly to request Your Excellency to appoint the State Board of Medical Examination, as required by the third section of the Act "To regulate the Practice of Medicine."

The undersigned has the honor to be,

Your Excellency's obedient servant,

J. L. Bennett.

Hiram, May 17, 1887.

And your committee report that no further communication has been received from the Governor.

In addition to the verbal statements of the Governor referred to by him in his communication of April 5, and the revelations

of the mutilated books in the State Department (doubtless still apparent to any citizen on inspection), your committee have the honor to report the following evidence.

[Statement by the Honorable Frank E. Sleeper, M. D., Senator from Androscoggin.]

Sabatis, May 9, 1887.

Hon. C. W. Goddard,

Dear Sir:—

While in Portland last week I received from you in behalf of a committee appointed by the "Censors" of the "Maine Medical Association" a letter requesting me to furnish you a statement of facts within my knowledge in reference to the so-called "Medical Registration Bill," approved by Governor Bodwell last March.

While at Portland my time was fully occupied with other matters, and since my return I have been too ill to write, which fact must account for delay.

As a medical man I am perfectly willing to put your committee in possession of any facts relative to this "Bill" which are not of too private or personal a character to be disclosed by me, for I believe it to be a matter in which *all* physicians, whether allopathic, homœopathic, or eclectic, and all honorable and fair-minded citizens of this State without regard to political affiliations are, or should be, deeply interested.

I will state the facts as briefly as I can, and they are substantially these.

A so-called "Medical Registration bill" was referred by the legislature of 1885 to that of 1887, and, after more or less consideration by the Judiciary Committee to which it was referred, no one appearing from the Maine Medical Association or elsewhere in support of the bill, and it being generally understood by the committee that the medical profession were not intending to press the matter this year, a report was accepted by both branches that "*legislation*" was "*inexpedient.*"

Several members of each branch were much dissatisfied with so summary a disposition of the matter, and after consulting with several friends I gave notice in the Senate on March 3d

that I intended to introduce in new form the same subject matter.

I submitted the draft of a new bill to the inspection and criticism of professional friends, and after adopting some of their suggestions I introduced the bill in the Senate March 8th, and it was referred to the committee on Legal Affairs. That committee gave a hearing to parties interested on the evening of March 10th, and the next day, the 11th, reported the bill, and it was ordered to be printed under joint rules. It was taken from the table and received its first reading on March 14, and on March 15 it passed the Senate to be engrossed, after full and able discussion, by a vote of 16 to 6, or almost 3 to 1.

The next day, March 16, after a sharp and spicy debate, the bill passed the House by the unexpectedly large vote of 89 to 30.

On the morning of March 17, the bill passed the House to be enacted and was immediately brought up to the Senate, where it also finally passed. In each branch it was signed by the presiding officer. The bill with several others, was then sent to the governor for his approval.

Between four and half-past four o'clock in the afternoon of the 17th, on my arrival at the State House I was informed by the governor's private secretary that the governor was in his room and desired to see me. I immediately went to the Executive Chamber where I found him in conversation with Dr. Cushing of Turner.

The governor informed me that he wished to talk with me in reference to the Medical Registration bill. He said that his previous talks with me about the bill, in which he had expressed himself as pleased with it, were before he had thoroughly examined it. He said further that the bill with others had been brought to him before dinner, and that upon reading it carefully he had found some things which he did not like.

Among other things that he mentioned was the suggestion that he thought it hard for a young man just graduated from a medical college and so poor that he hardly owned the shirt upon his back to be compelled to pay a fee of thirteen dollars. I informed the governor that he was in error in his interpretation of the bill, that the young man's diploma exempted him from examination, and he would only be required to pay *three* dollars for regis-

tration, and that no young graduate would grumble at that. I also explained several other points of the bill to him.

He then informed me that several prominent gentlemen had spoken to him in reference to the bill, and it was their opinion that the bill would prove to be a very mischievous one, and might cause a complete political overturn in the state.

He also said that he had left the bill upon his table until the last moment before dinner, but remembering the strong vote, about three to one, by which it had passed both Senate and House he had decided to approve the bill and leave the responsibility of the law, if it worked badly, upon the Legislature.

He further said that before he went to his dinner he signed the bill and sent it down, and it was now too late to do anything about it, but that if he had not done so he was of the opinion that he might be disposed to withhold his signature. The statement that it was "*too late to do anything about it*" he repeated several times, and at no time during that interview did he intimate to me any intention or power to withdraw his approval.

During this conversation the governor mentioned to me the names of several prominent gentlemen who were opposed to the bill, and informed me that it was feared that the matter "might get drawn into politics," if allowed to go on.

While at my hotel in the evening, previous to the evening session, I was informed by a friend that I had better be looking out for my bill as some underhand work was being done and he feared that the bill was to fare badly. I assured him that it was all right, as the governor himself had told me that he had "signed it and sent it down and that it was too late to do anything more."

He informed me that as a newspaper correspondent it was his business to gather news, and that hearing rumors that the bill was to be vetoed, he had visited the office where approvals were recorded. He found that at first it had been entered as approved, but that at six o'clock, when he next saw the record, a pen mark had been drawn through the entry, which was upon the top of the right-hand page of the Register. I immediately went to the State House, arriving at a little before eight. I went to the room where the register, or a book which corresponds to a register, was kept, and asked the clerk in charge for it. Upon looking over the book I could not find any entry at all of a

Registration Bill, and asked the clerk where I should find the entry of the governor's approval of that bill. He informed me that the governor had not approved it. I told him that he was mistaken, as the governor himself had told me that he had signed it and sent it down. The clerk said that he knew nothing about it; that I could see for myself that there was no entry there, etc. I asked him if any one else had had the book. He said no. I asked him if anyone else had access to the books to change them. He again said no. I told him that I could prove that as late as six o'clock the entry was there. He said that it was not, and then added that all entries were copied from the blotter. I then demanded to see the blotter.

On examining the blotter I found at about the middle of a page, the entry "*An Act to regulate the Practice of Medicine.*" In the column "*engrossed,*" was the entry "March 16." In the column "*approved*" there had been also an entry, but it was partially erased, evidently with a knife. I asked the clerk if he knew anything about that. He informed me that he did not. I then examined the register more closely and found where a leaf had been cut or torn out, and it was the page where the entry of the Registration bill would have been. I showed it to the clerk and asked him if he knew anything about that. He informed me that he did not! After showing the mutilations to several gentlemen present, I went directly to the governor's room, and had a long conversation with him.

I told him that rumors were afloat that he intended vetoing the bill. He said that he would like to talk with me about it, as he had not fully made up his mind. I called his attention to the fact that during our afternoon talk he had said repeatedly that he had signed the bill and sent it down and that it was too late to do anything more about it. He said that such had been his impression, but that he was informed that he had a right to withdraw his approval, if he desired. I then called his attention to a bill presented by Mr. Wakefield, (Representative from Bath,) who came to him after the bill had been passed and signed by him and told him that it was insufficient, etc., and that he then decided that the bill became a law when he signed it, and that it was too late; that in consequence Mr. Wakefield had been obliged to get through the Legislature a supplementary or new act, etc.

The Governor then said that such had been his opinion, but that he was informed by certain Congressmen, whom he named, that he had a right to withdraw his signature at any time before the bill had been reported to the Legislature as approved; that in Congress a bill does not become a law until approved by the President, sent to the Secretary of State, and by him reported back to Congress, etc. While we were discussing the matter, several other gentlemen came in, most of them anxious to save the bill. The governor said that the penalties were too severe. I offered to get through a supplementary bill, reducing them to anything that he thought just, although I assured him that no excessive or unjust sentence would ever be imposed under the act as it was. The governor said he thought that such an amendment as that would not do. He then asked me if I would be willing to have the date on which the bill should take effect changed to some time in January, 1889, after the next state election. I demurred to that at first, but afterwards joined with other friends of the bill present in consenting to it, to avoid further trouble with the governor.

All the gentlemen in the governor's room seemed to be friends of the bill, but several times during this interview the governor was called out by the Secretary of State into the adjoining Council Chamber, where some at least of the opponents of the bill seemed to be gathered, and after each visit there, the governor returned with fresh charges against the bill.

The governor finally told us that he would soon decide what he should do, and would either send in to me an amendment postponing the time at which the act should go into effect until about Jan. 15, 1889, or else that he would send in a veto message.

I returned to the Senate Chamber, and in a few minutes the bill with a veto message accompanying came into the Senate where it failed of a passage over the veto.

I think that it was on the ninth of April when I next saw the Governor, at which time I had a long conversation with him and fully discussed the present status of the bill. We agreed that eminent lawyers were divided in opinion as to the right or power of the Governor to veto a bill under such circumstances. The Governor mentioned that the matter would be likely to get into the courts, and asked me what I

intended to do about it. I told him that the matter was now in the hands of a committee, which would probably take such action as seemed best. He informed me that the committee had called upon him and that he had made a verbal statement, which the committee wished him to give in writing, but that he had not done so. He suggested that as there seemed to be some doubt about the veto, I should get a case into court for decision.

I replied that the bill, after passing both Senate and House, had been sent to him for his approval, that he had approved it with full knowledge of what he was doing, by signing his name to it and sending it to the office of the Secretary of State, of which facts no denial had ever been made; that it remained there a longer or shorter time after being recorded in the blotter and in a book used as a record book; that in consequence myself and other friends of the bill, as well as many who were not originally favorable to it, considered it beyond the power of veto; that our opinion had been concurred in by so many eminent legal gentlemen as to establish beyond question a *doubt* at least of the legality of his veto; that I did not believe that the Governor of the State could have any desire to persist in a course the legality of which was in the slightest degree doubtful; that he had the right to ask at any time of the Supreme Court Justices for an opinion as to the legality of any measure; that none of the friends of the bill had that right; and that in consideration of all the facts mentioned, I thought it his duty to submit to the court such a full and exact statement of facts in the case as might be agreed upon by him and the friends of the bill, and that the decision of the judges ought thus to be obtained as to whether or not the bill was now a statute law.

The Governor assented to the reasonableness of the suggestion, and assured me that he had no desire or intention to do anything which was not strictly legal and right. He said furthermore that it was as much his interest as mine to know the law in such instances, and that if he asked the opinion of the Court,(which he intimated that he should do,) he should certainly give *all* the facts so far as they could be ascertained. He added that after his return, (he was then I think on the way to Boston or New York) he would bring the subject to the attention of his Council, and, if thought favorably of, that he would ask the opinion of the Court.

I have not seen the Governor since that time, and know of no further action upon the matter.

As I have made my statement so much more lengthy than I intended, I will add nothing more except the hope that the committee, or the Maine Medical Association may be able clearly to show that the Governor, having signed the bill with full intention to approve it, and having sent it out of his possession to the Secretary of State, its proper custodian, had no further power in the case to recall or veto it, and that it is to-day a statute of our State.

Yours respectfully,

FRANK E. SLEEPER.

REPRESENTATION

of the first four entries upon one of the pages of the "Blotter–Acts" kept in the Department of State for the entry of engrossed bills, *showing the erasures in the third entry.* The scale is reduced to one half the actual size.

Chap	*Titles*	*Eng*	*Approved*
420	*An Act to extirpate contagious diseases among Cattle.*	*Mar 16*	*Mar 17*
424	*An Act relating to the Compensation of County Commissioners of the County of Sagadahoc*	*Mar 16*	*Mar 17*
425	*An Act to regulate the practice of Medicine*	*Mar 16*	*Mar 17*
425	*An Act to amend Sections 92, 95, 100 and 119 of Chapter 47 of the R. S. relating to Vagrants.*	*Mar. 16*	*Mar 17*

The first page of "Blotter–Acts" is headed "ACTS. – 1887.", and its several columns are headed as above.

The first page of the "Register" or "Titles–Acts." kept in the State Department for the entry of acts approved by the Governor, *and from which a leaf has been torn or cut,* is headed "ACTS. – 1887.", and its several columns are headed

"Chap – Approved – Titles".

NOTE. In Enclosure B (pages 11 and 12) a slight error occurs in stating the order of the "Register" columns.

[Requirements of the Constitution and of the Law.]

The Constitution of Maine contains these provisions:—

"The powers of this government shall be divided into three distinct departments, the Legislative, Executive and Judicial. No person or persons, belonging to one of these departments, shall exercise any of the powers properly belonging to either of the others, except in the cases herein expressly directed or permitted." (Art. III, Secs. 1, 2.)

"The laws shall not be suspended but by the Legislature or its authority." (Art. I, Sec. 13.)

"He" (the governor) "shall take care that the laws be faithfully executed." (Art. V, Part First, Sec. 12.)

"They" (the Justices of the Supreme Court) "shall be obliged to give their opinion upon important questions of law, and upon solemn occasions, when required by the Governor, Council, Senate, or House of Representatives." (Art. VI, Sec. 3.)

"Every bill or resolution having the force of law, to which the concurrence of both houses may be necessary, except on a question of adjournment, which shall have passed both houses, shall be presented to the Governor, and if he approve, he shall sign it; if not, he shall return it with his objections to the house, in which it shall have originated, which shall enter the objections at large on its journals, and proceed to reconsider it. If after such reconsideration, two-thirds of that house shall agree to pass it, it shall be sent together with the objections, to the other house, by which it shall be reconsidered, and, if approved by two-thirds of that house, it shall have the same effect, as if it had been signed by the Governor; but in all such cases, the votes of both houses shall be taken by yeas and nays, and the names of the persons, voting for and against the bill or resolution, shall be entered on the journals of both houses respectively. If the bill or resolution shall not be returned by the Governor within five days, (Sundays excepted) after it shall have been presented to him, it shall have the same force and effect, as if he had signed it, unless the Legislature, by their adjournment prevent its return, in which case it shall have such force and effect, unless returned within three days after their next meeting." (Art. IV, Part Third, Sec. 2.)

"The records of the State shall be kept in the office of the Secretary," (of State) "who may appoint his deputies, for whose conduct he shall be accountable." (Art. V, Part Third, Sec. 2.)

The law provides as follows:—

"When a public act is approved by the governor, the secretary of state shall give written notice thereof to the presiding officers of the senate and house, describing it by its title, and the date of its approval, which shall be entered on the journal of each house." (Revised Statutes, chap. 1, sec. 4.)

[Statement of Facts Proved, and Consequences.]

In obedience to the Constitution, the Registration Act, having finally passed both Houses, was presented to Governor Bodwell before dinner on Thursday, March 17. Thereupon the Constitution, declared to be the supreme law of the State, (Art. X, Sec. 4) and which every state officer is sworn to support, (Art. IX, Sec. 1) imposed a grave duty upon the Governor. That duty was, within five days to approve the bill or to return it with his objections. Five days were given him for deliberation, but he was at liberty to act at once, if he pleased. Nothing can be plainer. How was his disapproval to be manifested?

By returning the bill to the House in which it originated.

That official act of disapproval he was at liberty to perform at any moment during five days after the bill was presented to him, (unless prevented by adjournment of the Legislature.)

On the other hand how was he to manifest his approval?

Simply, by signing the bill. Such and no other is the express language of the Constitution: "and if he approve, he shall sign it." That official act of approval he was *at liberty* to perform at any moment after the bill was presented, although he was *allowed five days, if he chose to take that time,* provided the Legislature continued so long in session.

As matter of fact, how long did the Governor take for deliberation? To use his own language, "After considerable deliberation, I concluded to approve the bill, and accordingly I signed it and sent it down to the office of the Secretary of State, with several other acts which I had approved, and went to dinner."* "He also said that he had left the bill upon his table until the last moment before dinner."† According to the Governor's own acknowledgment, he did not act hastily, but *after considerable deliberation* he concluded to *approve* the bill, and accordingly *signed* it.

Can there be any doubt that he thereby fulfilled the requirement of the Constitution? Did anything remain for him to perform? Certainly nothing can be gathered or inferred from the language of the Constitution, to warrant such an assertion. But suppose that we travel outside of the Constitution and seek by some remote analogy to private deeds or wills to import the idea of delivery or publication. Even if such a requirement were conceded, it was fully performed, for the Governor admits that after having signed the bill, "*he sent it down to the office of the Secretary of State*, with several other acts which he had also approved, and went to dinner." Here we find every conceivable element of final, decisive, irrevocable executive action under the Constitution; deliberation, approval, signature, delivery to an officer elected by the Legislature and independent of the Governor, and publication to the world.

If anything remained in the power of the Governor to do with that bill to make it a public law of the State, what was it? By the deliberate, voluntary, official action of the Governor, the act had passed out of his possession, custody and control into that of another high public functionary; out of the Executive Chamber into the State Department and into the office of the Secretary of State, where that officer is required by law to pre-

* Governor's statement to sub-committee, page 10.

† Governor's statement to Senator Sleeper, page 17.

serve it. (R. S., c. 2, § 35) The power conferred by the Constitution had been exercised, the duty imposed upon the Governor had been performed; the executive authority over the act had been exhausted:—in the fullest sense of the term, it was "*functus officio.*" In the words of Judge Cooley, "The bill had passed beyond his control by the constitutional and customary mode of legislation," for "he had filed the bill with the Secretary of State with his approval subscribed."

The bill had passed regularly through every successive stage of legislation, had received the executive sanction, had reached its ultimate destination, its final resting-place, and had been duly and regularly enrolled among the public laws of the State.

Accordingly it was registered in the Registry, or "Titles of Acts" as "Act 422", with the date of its approval by the Governor; and the date of its approval was also entered in the "Blotter."

Thereupon it became the right of any citizen interested to demand of the Secretary of State a certified copy of the act, and it would have been the duty of that officer to furnish a copy of the same certified by him as a law of the State under the seal of the State, on tender of one dollar for the certificate and twelve cents a page for the copy. (R. S., c. 116, § 20.)

Whether any such certificate was in fact demanded and issued, your committee is not informed.

However that may be, it became the plain duty of the Secretary of State to notify the President of the Senate and the Speaker of the House, as soon as he had knowledge of the Governor's approval; and of that fact the entries in the Register and Blotter are conclusive evidence. (R. S., c. 1, § 4.)

Your committee find no evidence that the Secretary of State ever attempted to comply with this requirement of law except on a single occasion during the session. From "House printed Document No. 192" it appears that on the twenty-sixth day of February, 1887, he communicated a list of approved public

and private acts and resolves, with the respective dates of approval. The list includes 37 public acts approved between January 25 and February 23. No further notice of the approval of any act seems to have been given by the Secretary of State, although no less than 113 other public acts were approved during the remaining 19 days of the session.

But it is not easy to see how a neglect of duty on the part of the Secretary of State, an independent public officer elected by the Legislature and whose functions are defined by the Constitution and the law and not by the Governor, can operate to extend or enlarge the Governor's constitutional power; any more than a prompt compliance with the statute and an immediate performance of his official duty by the Secretary could abridge or limit the gubernatorial prerogative. He must be a bold expounder of the Constitution and the law who would venture to assert that if the Secretary of State had in fact promptly obeyed the peremptory command of the first page of the Revised Statutes, and given to the presiding officers of the Legislature the written notice which the law makes it his duty to give "when a public act is approved by the Governor";— to contend that after such a notice by the Secretary to the Legislature, the Governor would still have retained any shadow of authority over the approved act; that in any sense of the word it would be within the executive control, or power to revoke. If then, on the other hand, by the omission or neglect of the Secretary, notice were delayed, will it be claimed that for five days it would be in the power of the Governor to order an act which he had once approved, to be withdrawn from the file of public laws and to be returned to him from the Department of State, in order that the same might be sent back by him to the Senate as a vetoed bill? If so, the veto power of *unapproved* bills still rests with the Governor, as provided in the Constitution, while a new veto power unknown to the Constitution, to wit, the veto of *approved* bills rests in the Sec-

retary of State and the Governor, jointly; a dual power, unique indeed. Of such a divided sovereignty the lion's share would be the Secretary's; for his, be it remembered, would be "the right of possession." That puissant functionary would have a choice of weapons; for he might, as has been seen, promptly and forever extinguish the veto power of his superior by notice to the legislature; or, forbearing the exercise of that authority, he might flatly refuse to deliver even to the Governor a public law which had been filed in his office among the records for the preservation of which in said office the law holds him responsible. In case of refusal, by what process known to the Constitution or the law could the Governor compel the delivery?

The statute is plain, explicit and peremptory, but it is directed solely to the Secretary of State, and his obedience or disobedience can affect nobody but himself. "The general principle which governs is, that while there should be a strict compliance with the provisions of a statute, yet where they are directory merely, such strict compliance is not essential to the validity of proceedings under such statute, unless they are declared to be therein. This is specially applicable where the rights of the public or of third persons are concerned." *

In such case those rights and the evidence to perpetuate them are "not to be thrown away because the Secretary of State fails, or is unable to comply with this direction." †

Notice by the Secretary was "not a proceeding necessary to the making or imparting vitality to the law. By it no Act could become a law which without it would not be a law." ‡

Again, it will be observed that there is no statute provision for the promulgation of Private or Special acts by the Secretary of State. Although, for some reason not apparent to

* Opinion of Justices of Supreme Court in answer to Governor Garcelon. 70 Maine Reports, page 569.

† Ibid., page 598. ‡ People v. Hatch, 19 Ill., 283.

your committee, the Secretary was pleased to include a great number of private and special acts and indeed resolves in the solitary communication which he saw fit to address to the House, he was required to give notice of the Governor's approval of *public* acts only.

Will it be claimed by defenders of the Governor's conduct (if any such there are,) that the Secretary's check upon the power of the Governor is limited to public acts? How would such a theory work in practice? Suppose that the legislature, after due deliberation and discussion, should relinquish to the United States the sovereignty of Maine in an island near the coast for the erection of a fortress, and the District Attorney of the United States should, after approval of the bill by the Governor and its deposit in the archives of the State Department, demand and receive a certified copy of the act under the seal of the State, and forward it to Washington. Will it be pretended that after the lapse of four days the Governor could lawfully recall the act from the custody of the Secretary of State, obliterate his signature, and return it with his veto to the legislature? Or suppose the grant of a township of land or an appropriation to the Maine General Hospital, or to some college, or other charitable institution. Will it be argued that at any time within five days after his approval of the act of grant, the Governor might lawfully demand its return from the archives of the Secretary's office, cancel his approval and return it with his reasons to the house where it originated? Do advocates of the Governor's proceedings realize the consequences of such a doctrine, and are they ready to accept them?

An honest, common-sense, straight-forward construction of the plain, unmistakable language of the Constitution leads to no difficulties and involves no such absurdities.

The Chief Magistracy was designed to be an office of high dignity and honor, and it has always commanded the pride and respect of the people of Maine. The Governor is furnished

with a Council elected by the Legislature; he is also entitled to the advice of the Attorney General, and on important questions of law to the opinion of the Supreme Judicial Court. His appointments require the assent of his Council, but his prerogative of approval or disapproval of legislative action is personal and absolute; its exercise is, from the nature of the power, final and irrevocable. The attempt to reconsider, recall and annul the Executive Approval once deliberately given to an Act of the Legislature and emphasized by a deposit of the law in the Department of State is dangerous trifling with the Constitution. If the upright private citizen is recognized as the man "that sweareth to his own hurt, and changeth not," it is of supreme importance that the public acts of the Head of the State authenticated by his official signature may be relied and depended upon. This truth seems to have impressed itself even upon the unprincipled and tyrannical governor of Judæa, when he dismissed his crafty advisers, with the contemptuous answer, "What I have written I have written":—the only redeeming circumstance recorded of his administration.

It is unnecessary to inquire what would be the effect of a manifest inadvertence or mistake on a Governor's part, as, for instance, if he should unintentionally sign a bill which he intended to veto, and send it to the Secretary's office, unwittingly. For no such question presents itself here: Governor Bodwell admits "that *after considerable deliberation* he concluded to approve the bill, and that accordingly he signed it and sent it down to the office of the Secretary of State, with several other acts which he had approved, and went to dinner."

The idea of mistake, inadvertence, or even of haste is expressly excluded and denied by the Governor. Even if such had been the case, a message to that effect and a repeal of the law thus accidentally approved would seem to be the only lawful remedy.*

* See Cooley on Constitutional Limitations, Fifth Edition, Note to page 186.

But the Governor, as has been said, declares that he *made no mistake* in signing the bill. It was not until several hours after, that he began to doubt the wisdom of his official action, and even then his doubts were not self-suggested. Nor did they emanate from any of his constitutional advisers.

"After my return from dinner," said the Governor to the sub-committee, "several gentlemen called to express their disapproval of and opposition to the act, and urged me to recall and veto it."*

Who those gentlemen were the Governor disclosed to Senator Sleeper,† as well as to several other citizens; the name of the Attorney General or of any of the Council will not be found among them. Neither was the Governor easily persuaded; for at first he objected, supposing that it was not within his constitutional power to recall the act, but was finally convinced to the contrary. "He further said that before he went to dinner he signed the bill and sent it down, and it was now too late to do anything about it."‡ To the same Senator the Governor was pleased to divulge the arguments by which he was finally convinced of the pernicious tendency of the act, and overpersuaded to reverse his original judgment. ‖

So far as the researches of your committee have extended, the proceedings of Governor Bodwell and at the State Department are without a parallel in the history of constitutional government. The nearest approach to such a predicament as now exists in Maine which your committee have discovered, is found in the single authority cited by Judge Cooley in his "Treatise on the Constitutional Limitations upon the Legislative Power of the States of the American Union."

"An act apportioning the representatives was passed by the legislature" (of Illinois) "and transmitted to the governor, *who signed his approval thereon by mistake*, supposing at the time that

* Governor's Statement to sub-committee, p. 10. † Page 17.
‡ Governor's statement to Senator Sleeper, p. 17. ‖ Pages 17, 19.

he was subscribing one of several other bills then lying before him, and claiming his official attention: his private secretary thereupon reported the bill to the legislature as approved, not by the special direction of the governor, nor with his knowledge or special assent, but merely in his usual routine of customary duty, *the governor not being conscious that he had placed his signature to the bill* until after information was brought to him of its having been reported approved; whereupon he sent a message to the speaker of the house to which it was reported, stating that it had been *inadvertently signed and not approved*, and on the same day completed a veto message of the bill *which was partially written at the time of signing his approval*, and transmitted it to the house where the bill originated, having first erased his signature and approval. It was held that the bill had not become a law. *It had never passed out of the governor's possession* after it was received by him until after he had erased his signature and approval; and the court was of opinion that it did not pass from his control until it had become a law by the lapse of ten days under the constitution, *or by his depositing it with his approval in the office of the secretary of state.*

It had long been the practice of the governor to report, formerly through the secretary of state, but recently through his private secretary, to the house where bills originated, his approval of them; but this was only a matter of formal courtesy, and not a proceeding necessary to the making or imparting vitality to the law. By it no act could become a law which without it would not be a law. Had the governor returned the bill itself to the house, with his message of approval, it would have passed beyond his control, and the approval could not have been retracted, unless the bill had been withdrawn by consent of the house; *and the same result would have followed his filing the bill with the secretary of state with his approval subscribed.*"—People v. Hatch, 19 Ill., 183.

This is the case cited by Judge Cooley in support of his declaration that "The governor's approval is not complete until the bill has passed beyond his control by the constitutional and customary mode of legislation; and at any time prior to that he may reconsider and retract any approval previously made." —Cooley on Constitutional Limitations, Fifth Edition, page 186.

This is equivalent to the statement that the Governor's approval *is* complete as soon as the bill has passed beyond his control by the constitutional and customary mode of legislation; and *after that time he cannot* reconsider and retract any approval previously made. And this too, as the case cited in its support clearly shows, even though the approval was signed *inadvertently and by mistake*. It will be perceived that the Illinois case is in every important respect the reverse of this in Maine.

The Governor of Illinois "signed his approval of the Apportionment bill thereon by mistake":—*the Governor of Maine signed his approval of the Registration bill knowingly and "after considerable deliberation."* The Illinois governor "supposed at the time that he was subscribing one of several other bills then lying before him and claiming his official attention":—*Governor Bodwell labored under no such misapprehension.* The Illinois Executive "was not conscious that he had placed his signature to the bill until information was brought to him of its having been approved":—*our governor, "upon reading it carefully had found some things which he did not like,"* "and had left the bill upon his table until the last moment before dinner, but remembering the strong vote, about three to one, by which it had passed both Senate and House he had decided to approve the bill and leave the responsibility of the law, if it worked badly, upon the Legislature."*†

The governor of Illinois, immediately, on discovery of his mistake, sent a message to the speaker "stating that the bill had been inadvertently signed and not approved," a manly and above-board proceeding, it must be confessed:—*the governor of Maine sent no such message, nor could he truthfully have done so.* On the same day the Western chief Magistrate "completed a veto message which was partially written at the time of

* Governor's Statement to Senator Sleeper, page 16.

† Ibid., page 17.

signing his approval":—*when our Governor's veto message was composed does not appear, but it will not be pretended that it "was partially written at the time of signing his approval."*

The Illinois bill "had never passed out of the governor's possession after it was received by him until after he had erased his signature and approval:"—*Governor Bodwell himself states that he "signed the bill and sent it down to the office of the Secretary of State, with several other acts which he had also approved and went to dinner;" that he had "signed the bill and sent it down and that it was now too late to do anything about it."**

And yet the Supreme Court of Illinois declare that in spite of his manifest inadvertence, his purely accidental and entirely pardonable mistake, nay, in spite of his half-completed veto, the bill, "would have passed beyond the governor's control and the approval could not have been retraced," if he had done *inadvertently* exactly what the governor of Maine admits that *he* did deliberately and understandingly, namely, "if he had filed the bill with the secretary of state, with his approval subscribed."

Your committee therefore respectfully submit that their view of the Constitution and of the law is thoroughly sustained by the high authority of Judge Cooley as well as by that of the Supreme Court of Illinois.

Of the merits of the Registration Act or of the objections suggested to the Governor by his advisers, or of the reasons for his change of mind mentioned by the Governor to the Senator, or of those other reasons assigned in His Excellency's message to the Senate, it is not the purpose of your committee to express an opinion. It is with the constitutionality and legal effect of the Governor's action and the consequent status of the act that they are at present concerned.

Your committee did not doubt the sincerity of the Governor's disavowal of an intention to exceed his authority or to conceal any act performed by him in the premises, and of

* Governor's Statement to Senator Sleeper, page 17.

all knowledge of the extraordinary proceedings at the Department of State. The cancellation of his official signature of approval was effected in a manner which reveals the successive phases of the transaction, as it doubtless was designed to do.

But they confess themselves unable to explain the condition of the books kept at the office of the Secretary of State upon a similar hypothesis.

"In the first place there would seem to have been no occasion for tampering with them at all. With the Governor, the case was different: for after he had been prevailed upon to reverse his official action and to send back to the Senate an act which he had once approved, it became absolutely necessary for him to cancel his signature, because the document could not be the subject of his approval and disapproval at the same time.

This was a part of the awkwardness of the dilemma in which a change of base had involved His Excellency: a significant indication of the absurdity of the suggestion of his advisers, and a sufficient warning, (one would have supposed,) against its acceptance.

But such reasoning is obviously inapplicable to the entries in the Secretary's books. The Governor never directed any cancellation or alteration of those books; on the contrary, he is careful to say that their mutilation was effected without his knowledge. Your committee are not informed of any authority for meddling with entries once made in either of the volumes, even if the Governor had undertaken to direct it; indeed they fail to perceive how the removal of the "Act to regulate the Practice of Medicine" from the archives of the State Department where it had once been deposited with the other public laws of the State in compliance with the request of Governor Bodwell can be justified by the Secretary of State, the lawful custodian of those archives. Ours is, or ought to be "a government of laws, and not of men"; and a Secretary of State might, in your committee's opinion, "deserve well of the Republic" by

respectfully declining to surrender, even to a Governor, the possession of a public law which he knew to have been filed by that Governor's own direction in the archives of the Department of which the Secretary was the sworn custodian, and which he must have known that he had no right to deliver to any person whatever.

But if, in the absence of any request, and indeed without his Excellency's knowledge, superserviceable zeal prompted a cancellation of the record of the Governor's official action in books kept for the purpose by the Secretary of State, what excuse can be pleaded for following up the cancellations by obliterations and mutilations? for erasures by a knife, and the cutting or tearing out of a leaf?

What worthy purpose required the obliteration of entries made in those books in the regular and ordinary course of official business? Do not those obliterations, taken in connection with the denials, evasions and equivocations mentioned by Senator Sleeper,* indicate a design to conceal from the people of the State the facts in the case by destroying the evidence of their existence?

Whether those volumes are in the strict technical sense public records is a cavil which can avail nothing in the forum of morals, whatever might be its effect in a civil or criminal proceeding. Your committee cannot help regarding such erasures and mutilations as of evil omen and pernicious and portentous example.

In view of the extraordinary revelations in reference to the approval and subsequent recall and return of the Registration Act, elicited by your committee, it was hoped that the Governor would be disposed to avail himself of the opinion of the Supreme Court in reference to the constitutional and legal effect of his official action thereon, and thus to settle at once and finally, in a mode pointed out by the Constitution, the status

* Senator Sleeper's Statement, page 18.

of that important act. For such an application there was a recent memorable precedent. In December, 1879, Governor Garcelon, at the request of the late Ex-Secretary Morrill, made a similar requirement of the Court, to the great relief of the citizens and with the happiest result.

A like request to Governor Bodwell seemed to your committee eminently appropriate, because His Excellency had intimated to Senator Sleeper his own inclination toward a reference of the matter to the Court, and he had also given his word to the sub-committee that he would furnish a statement of the facts over his signature, so that the question might have been submitted by the Governor upon his own recital of his official action, unembarrassed by the conduct of any other person, public or private. Furthermore His Excellency's disavowals of intentional usurpation of authority and of a desire to conceal or suppress his official acts touching the Registration Bill, as well as his denial of all knowledge of the sinister practices upon the books of the Department of State led your committee to believe that he would welcome so auspicious an opportunity to rid himself of the disagreeable responsibility which enveloped him. In fact it might as well be confessed that at this stage of the proceedings, a reference to the Court appeared to your committee the only course entirely consistent with the honor of all parties, and therefore the only one which promised a thoroughly satisfactory solution of the impending difficulty. Such is the respect entertained by the Medical Profession for the wisdom, impartiality and independence of the Court, that an adverse decision on a question of vital importance, however it might have disappointed, could not have dissatisfied its members; while a favorable answer ought not to have been unacceptable to the Governor, who surely might be presumed to be only too grateful to the official interpreters of the Constitution for "taking care that the republic received no detriment" from unconstitutional executive action.

Accordingly the appeal was made, respectfully but unsuccessfully. Finally the Governor was requested to perform what seemed to your committee his plain duty, viz:—to appoint a State Board of Medical Examination and Registration, in obedience to the third section of the statute.

To proceed further without special direction did not seem to your Committee within the purview of their instructions, which were "to ascertain the status of the Registration Act."

[Conclusion.]

Your Committee have been led by the foregoing evidence to the following conclusion:

That "An Act to regulate the Practice of Medicine," having, after full discussion in both branches passed by extraordinary majorities, (16 to 6 in the Senate and 89 to 30 in the House) was presented to the Governor about noon of Thursday, March 17, 1887, with several other bills; that after considerable deliberation the Governor understandingly approved and signed the bill according to the requirements of the Constitution, and thereupon sent it down to the office of the Secretary of State, with the other acts which he had approved about the same time, to be deposited as a public law in the archives of the State Department, among the laws of the State.

That said act was then and there received by the Secretary of State and deposited in his office among the laws, and the fact of the Governor's approval, thus made known to the Secretary, was duly entered in the usual manner in the books kept in said office for that purpose.

That thereby and at that time, viz:—about noon of said day, the Registration Act became, to all intents and purposes, a public law of the State, and passed beyond the control of the Governor or either branch of the Legislature, except by a stat-

ute of repeal enacted by both branches and approved by the Governor.

That thereupon it became the duty of the Secretary of State to "give written notice thereof to the presiding officers of the Senate and House," according to law.

That the Secretary's neglect of duty could not and did not enlarge or extend the constitutional prerogative of the Governor, or prevent said act so approved and deposited from becoming a public law according to the Constitution, or defeat, postpone or delay the same.

That the mutilations of the books in the State Department and the erasures of the entries which recorded the fact and date of the Governor's approval of said act and its deposit in said Department as a public law were unauthorized by the Governor and were accomplished without his knowledge, and are of no effect to invalidate, repeal or nullify the same.

That the Secretary of State had no warrant of law to surrender to the Governor or to any other person possession of the Registration Act which several hours before had been received from the Governor approved by his official signature and had thereupon been filed among the laws of the State and the fact of his approval entered in the usual manner in the books kept in the State Department for that purpose, because the same had already become, by the Governor's deliberate official action, of which the Secretary of State was cognizant, a public law, of whose approval it was his official duty to give prompt written notice to the two houses, said public law being then and there a part of the records of the State which the statute requires to be kept in the office of the Secretary of State and in the Secretary's custody, the knowing and wilful removal whereof therefrom is declared to be felony. (R. S., c. 117, § 7.)

That the proceedings of the Governor touching said act during the afternoon and evening of said day several hours

after his approval and deposit thereof in the State Department, viz:—his recall of the same, the cancellation of his official signature, the return of the act after said cancellation to the Senate, and the sending an accompanying message were all unconstitutional and void, being beyond his constitutional authority and power.

That said Act is now a public law of the State constitutionally binding upon every public officer as well as upon each citizen of Maine until it shall be repealed according to law.

And that therefore it was the duty of the Governor to carry the same into effect by the appointment, on or before the first day of May, 1887, of "a State Board of Medical Registration and Examination," according to the requirements of the third section of said act.

Your committee have endeavored to discharge the duty entrusted to them in a manner befitting the gravity of the situation and the magnitude of the issue.

Respect for the Executive office prompted them to address their inquiry to the Governor in person, as the dignified and honorable means of ascertaining the truth in reference to an important public transaction, the usual and appropriate evidence of which had been obliterated by those whose duty it was to preserve it. Relying upon the Governor's promise of a written statement, your committee would gladly have accepted any version of his proceedings which he had been pleased to send. Disappointed in this, they still retained the hope that the Chief Magistrate would not refuse a respectful request to submit the constitutional and legal effect of his extraordinary action to the judgment of the Court in the way expressly provided for such cases.

They were slow to believe that "the only individual in the world," (to borrow the language of Ex-Secretary Morrill's let-

ter to Governor Garcelon) "who could command the prompt opinion of the Supreme Judicial Court," would refuse to follow the example of his predecessors in the executive chair whose "habit has been uniform and general to apply to the court for the interpretation of the law."

Your committee's experience is an unpleasant reminder that if the fundamental principle of representative government is to be re-asserted in 1887, it must be maintained without the aid which, at the crisis of 1879, the Governor was willing to contribute.

If their view of the treatment which this act has received at the hands of the Executive Department is correct, it is manifest that a great wrong has been committed against the Medical Profession and the Constitution: for a public law has been withdrawn from the archives of the State Department without the consent or knowledge of the Legislature, and expunged from the statute book.

Whether the Medical Registration Act or any other law of the State, however beneficent, is enforced or annulled is in itself of minor importance; but whether the will of the electors of Maine expressed by a vote of three fourths of their Senators and Representatives and approved by their Governor according to the Constitution and the law can be defeated by unlawful and unconstitutional means, and redress through the courts be prevented by the denial, withholding or destruction of record evidence of executive action is, in the judgment of your committee, a question of a very serious character.

Good faith and strict conformity to the Constitution and to the law on the part of the ruler is as indispensable to the permanence of republican institutions as patriotism and obedience on the part of the private citizen. The axiom is eminently true of State governments, notably of our own, where under the biennial system, the Executive Department is left, by the early and final adjournment of the Legislature, virtually in-

dependent and irresponsible for at least twenty-one months out of the twenty-four.

Abundant experience has proved that a republic, unfaithfully and arbitrarily administered, is no better than a despotism: if controlled by a junto, it may become worse. There is no saving political grace inherent in governmental ordinances. *Quis custodes custodiet?*

That the Registration Act became and remains a public law of Maine, of full validity and constitutional and legal force, your committee entertain no doubt; but whether the mutilation of the books kept in the Department of State, coupled with His Excellency's refusal to authenticate his verbal statement of his own official action, his further refusal to consult the Court thereon, and his neglect to make the appointments required by the act, interpose an insurmountable obstacle to the successful prosecution of legal measures to assert the rights secured to the Medical Profession by said act and to obtain for our fellow-citizens the protection to which they are entitled, during the present administration of the State government, and thus for the present the "great command shall o'ersway the order" and the law;—or whether redress may nevertheless be had, and the rights thus jeopardized be vindicated and regained in the courts, is a question on which your committee forbear to express an opinion, preferring to leave the consideration and if need be, the prosecution of the same, to the wisdom of the Association.

All of which is respectfully submitted.

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Portland, June 4, 1887.